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6 CLASSIFICATION STANDARDS REGULATION

7 CONSULTATION MEETINGS

8 WITH THE ROSEBUD SIOUX TRIBE

9 taken on July 18, 2006

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19 Reported by Sherry G. Auge, RPR  
20 DIANE M. WRIGHT & ASSOCIATES  
5365 Maple Ridge Court  
Minneapolis, Minnesota 55343  
21 Phone: (952) 938-3055

FAX: (952) 935-8805

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1       The Consultation Meeting with the ROSEBUD  
2       SIOUX TRIBE, was taken before Sherry G. Auge, a  
3       notary public in and for the County of Washington,  
4       State of Minnesota, on July 18, 2006, taken at the  
5       Sheraton Hotel, Lounge No. 3, 7800 Normandale  
6       Boulevard, Bloomington, Minnesota, commencing at  
7       approximately 1:03 p.m.

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9           A P P E A R A N C E S:

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11       ON BEHALF OF THE NATIONAL INDIAN GAMING  
12       COMMISSION:

13       PHILIP N. HOGAN, Chairman of the National  
14       Indian Gaming Commission, 1441 L Street NW, Suite  
15       9100, Washington, D.C. 20005;

16       CLOYCE V. CHONEY, Chairman of the National  
17       Indian Gaming Commission, 1441 L Street NW, Suite  
18       9100, Washington, D.C. 20005;

19       JOSEPH M. VALANDRA, Chief of Staff of the  
20       National Indian Gaming Commission, 1441 L Street  
21       NW, Suite 9100, Washington, D.C. 20005;

22       NATALIE HEMLOCK, Special Assistant to the  
23       National Indian Gaming Commission, 1441 L Street  
24       NW, Suite 9100, Washington, D.C. 20005;  
25       PENNY COLEMAN, Acting General Counsel for the  
  
      DIANE M. WRIGHT & ASSOCIATES

1 National Indian Gaming Commission, 1441 L Street  
2 NW, Suite 9100, Washington, D.C. 20005;

3 MICHAEL GROSS, Senior Attorney for the National  
4 Indian Gaming Commission, 1441 L Street NW, Suite  
5 9100, Washington, D.C. 20005;

6 JOHN R. HAY, Staff Attorney for the National  
7 Indian Gaming Commission, 1441 L Street NW, Suite  
8 9100, Washington, D.C. 20005;

9 JOHN PETERSON, Regional Director for the  
10 National Indian Gaming Commission, St. Paul Office,  
11 190 East 5th Street, Suite 170, St. Paul, Minnesota  
12 55101;

13 ALLEN PHILLIPS, Field Investigator, 801 I  
14 Street, Sacramento, California.

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16 ON BEHALF OF THE WHITE EARTH NATION:

17 GERALD EAGLE BEAR, Gaming Director;

18 BETTY ZIMMERMAN, Gaming Commissioner;

19 IDA ZIMMERMAN, Visitor.

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1 WHEREUPON, the following proceedings were duly  
2 had:

3 COMMISSIONER HOGAN: We'll start the  
4 proceedings here. We want to welcome you to this  
5 government-to-government consultation. I'm Phil  
6 Hogan, Chairman of the National Indian Gaming  
7 Commission. Commissioner Chuck Choney is also with  
8 us here, and as part of the team, we have Joe  
9 Valandra, who's from Rosebud, who's our Chief of  
10 Staff, and Natalie Hemlock is an Assistant to the  
11 Commission in our D.C. office.

12 Seated next to the reporter here is Penny  
13 Coleman, our Acting General Counsel, and from her  
14 office, we have Michael Gross, and John Hay who are  
15 attorneys in that office. John Peterson is our  
16 Regional Director. John's office is here in St.  
17 Paul, and in the St. Paul territory, of course, is  
18 the Rosebud area. And we also have a regional, or  
19 satellite office, out in Rapid City where Jim McKee  
20 and DeLyle Fall staff that office, and they're  
21 probably the ones that you will see most frequently

22 from NIGC. And Allen Phillips is with our  
23 Sacramento office. He's one of our experts in  
24 terms of gaming devices and is interested in  
25 helping us get our regulations right.

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1       We're holding these consultation sessions in  
2       connection with regulations we published in the  
3       Federal Register on the 25th of May, and they  
4       address definitions that are in the NIGC  
5       regulations and some proposed regulations that  
6       would try to better distinguish between Class II  
7       gaming equipment the tribes can use, without tribal  
8       state compacts, and those electronic facsimiles of  
9       games of chance and slot machines that are Class  
10      III that require a compact to play. So that's who  
11      we are.

12       Before we start the discussion, why don't you  
13      introduce yourselves on the record here, so that  
14      the reporter will know who's participating, and  
15      we'll have that in our documentation.

16       MR. GERALD EAGLE BEAR: Once again, my  
17      name is Gerald Eagle Bear, and I am the Executive  
18      Director for the Rosebud Sioux Tribe Gaming Office.  
19      I'm three weeks into the job, so I'm kind of  
20      getting along with things there at the office with  
21      everything new that's coming about. With me, I

22       have --

23               MS. BETTY ZIMMERMAN: I'm Betty Zimmerman.

24       I'm the newly elected Gaming Commissioner for the

25       Rosebud Sioux Tribe, and I'm even newer than him

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1 about a week, and I know a lot about the other side  
2 of gaming. I really enjoy it, but it'll be  
3 interesting to see this side of it, see how things  
4 operate, so I'm looking forward to it.

5 COMMISSIONER HOGAN: Welcome to the world  
6 of Indian gaming regulation. We've been a part of  
7 that for quite awhile.

8 MS. BETTY ZIMMERMAN: And this is my  
9 sister, Ida Zimmerman.

10 MS. IDA ZIMMERMAN: Hello. Just sitting  
11 in. I came along with her.

12 COMMISSIONER HOGAN: Well, do you have any  
13 specific comments about the proposed regulations or  
14 questions about that? We'd be happy to talk with  
15 you about what's on the drawing board.

16 MR. GERALD EAGLE BEAR: Maybe, this should  
17 be off the record, but I'm a little bit intimidated  
18 by everybody with suits and ties and the lawyers  
19 and all that, because I'm fairly new to the gaming  
20 industry. Before this, I was a teacher, and I did  
21 some program directing with some programs, so I'm a

22 little bit -- I know, you guys are very  
23 knowledgeable in the gaming industry, and I really  
24 depend on you guys's guidance and support in  
25 getting us through this regulatory -- this

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1 initiative.

2 So I wanted to get that off my chest right off  
3 the bat. As far as the proposals, I'm really glad  
4 that the consultations are going on where we  
5 actually have a voice in some of the changes that  
6 are proposed.

7 At the Rosebud Casino, we have, I guess, the  
8 Class II, which is kind of a little shady, you  
9 know, bingo right off the bat. That's one thing  
10 that we have. We don't have pull-tabs or anything.  
11 We're not a huge casino, but it helps us survive,  
12 Class II. We have bingo, some card games, poker,  
13 and I think, that's the extent of Class II. We did  
14 have some Class II machines there previous to my  
15 directorship, and they were -- I don't think they  
16 were making any money, so they pulled them from our  
17 establishment. Do you want to say something?

18 MS. BETTY ZIMMERMAN: I'm just wondering  
19 if someone, kind of, will just briefly, simply  
20 explain, you know, some of this. For example, how  
21 these changes are going to have a negative, maybe,

22 negative impact on the Indian gaming as far as the  
23 State? You know, is the State gonna have  
24 greater -- a greater impact on what Indian gaming  
25 does as a result of these changes if they go

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1 through? That --

2 COMMISSIONER HOGAN: Let me try to address  
3 that.

4 MS. BETTY ZIMMERMAN: Okay.

5 COMMISSIONER HOGAN: The Indian Gaming  
6 Regulatory Act, passed in 1988, did a number of  
7 things. One of the things it did was create the  
8 National Indian Gaming Commission, and one of the  
9 jobs it gave us was to promulgate some standards  
10 that would be used in the Indian gaming industry,  
11 and it said tribes can do Class II gaming if the  
12 state where they are located permits that kind of  
13 gaming.

14 For example, in Utah, all gambling is illegal,  
15 so the Utah tribes can't even play bingo, but in  
16 states, basically -- includes most of the rest of  
17 them -- where bingo is permitted, tribes can play  
18 bingo games, Class II gaming, without entering into  
19 a compact with the State.

20 And it said when they play bingo, pull-tabs,  
21 games like that, they can use technologic aids to

22 make that play faster, more fun, get more people  
23 involved. And then, they said, if you're gonna do  
24 Class III gaming, which is not bingo and non-banked  
25 card games, but games like Roulette and Craps,

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1 things like that, plus slot machines, and  
2 electronic facsimiles of games of chance, then, you  
3 have to have a Class III compact.

4 Well, what's been confusing throughout the  
5 history of the Indian Gaming Regulatory Act, is  
6 what's the difference between these technologic  
7 aids to play bingo and these electronic facsimiles  
8 that are Class III? And there have been a number  
9 of lawsuits, cases, brought by the United States  
10 Justice Department, where they saw machines that  
11 they thought those are Class III electronic  
12 facsimiles of games of chance, and tribes argued,  
13 no, those are just technologic aids.

14 Well, several of those cases that were decided  
15 ruled in the tribe's favor. They said look, those  
16 machines, that equipment, just aids the players in  
17 playing bingo. It doesn't play the game for them,  
18 or it's not a game where they're playing against  
19 the machine.

20 And some of the other court cases, for example,  
21 involving pull-tabs said, well, you've got an all

22        electronic pull-tab now, and, therefore, that's an  
23        electronic facsimile of the game of chance. That  
24        falls into Class III.  
25        Gaming machine manufacturers would then come to

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1 the National Indian Gaming Commission and say, we'd  
2 like to put this machine out on a tribe's casino  
3 floor, so they can play it as a Class II game  
4 without a compact. Will you please write an  
5 opinion saying it's okay to do that, because we  
6 really don't want to get in trouble with the  
7 Justice Department or anybody else. We want to do  
8 it right. And so from time to time, we would issue  
9 these advisory opinions saying, okay, game  
10 manufacturer, if you build this machine this way  
11 and play it this way, that'll be Class II.

12 And we've issued several of those over the  
13 years, but it's a long, complicated, expensive  
14 process, and usually, by the time we get done,  
15 technology has come along and made that kind of  
16 obsolete. So we decided there's got to be a better  
17 way to do so this. Let's write some regulations  
18 that will say in crystal clear language, this is  
19 what you have to do to be Class II. If it goes  
20 beyond that, then, it's Class III.

21 And we thought a way to make that work is

22       rather than have the manufacturers, the tribe send  
23       us the game, or the machine, they can take it to a  
24       gaming laboratory, and there's good established  
25       gaming laboratories out there, and they will, then,

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1 test this against these standards that we write.

2 If they certify this complies with those Class II  
3 standards, then, you're good to go. Then, you can  
4 play it without a compact.

5 Now, we also, in these proposed regulations  
6 would say, maybe, we'll disagree with some of  
7 those. And so we'd have a right to object, and  
8 we'd negotiate and so forth, but that's the purpose  
9 of this, so we can have a bright line out there, so  
10 if tribes are gonna invest millions of dollars in  
11 equipment to do without a compact, but play as  
12 Class II, they'll be on solid ground. They won't  
13 have to worry about tomorrow somebody coming along  
14 and saying, no, that's Class III.

15 That's what we're trying to do, and it's  
16 complicated, because some technology moves so fast.  
17 We are trying to anticipate where it's gonna go.  
18 I'm sure of a couple of things: If and when we  
19 finalize these regulations, some manufacturer or  
20 some tribe, or both, will sue us, and say, you went  
21 too far. You made it too restrictive. And then,

22      that'll go to court, and the judge will decide, did  
23      we do the right thing, or was it too restrictive.  
24      And that'll be good. That'll be good to have some  
25      clarity to that.

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1       Secondly, I'm sure as soon as the ink is dry on  
2       these, we're gonna think of something that makes --  
3       they need to be more modernized. And from time to  
4       time, we'll have to make amendments to keep them  
5       current with technology. So that's the plan. And  
6       we know that in South Dakota, Class II is not a  
7       real big issue, but there's this struggle with the  
8       State. They wouldn't come to the table to  
9       negotiate to give you more than 250 machines, so  
10      tribes are looking at some alternatives.

11      I'm a member of the Oglala Sioux Tribe, and  
12      Pine Ridge would like to put a facility up there  
13      south of Kadoka on the northern edge of the  
14      reservation to get some of that interstate traffic,  
15      but they've got all of their 250 machines over at  
16      Prairie Winds over at Oglala, and so they're  
17      thinking about Class II. What can we do? Well, if  
18      they're gonna invest up there, they better be sure  
19      they know what they can and can't do. That's kind  
20      of how it works.

21      MS. BETTY ZIMMERMAN: That classification,

22       there's a lot.

23               COMMISSIONER HOGAN: Do you know what kind

24       of machines they had on the floor there, the Class

25       II, that were there for awhile that they took out

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1 of --

2 MR. GERALD EAGLE BEAR: Nova.

3 COMMISSIONER HOGAN: Those were the Nova  
4 machines?

5 MR. GERALD EAGLE BEAR: Yes.

6 COMMISSIONER HOGAN: They had an office in  
7 Rapid City, and then they closed down, I think.

8 MR. GERALD EAGLE BEAR: Yeah. I can't  
9 remember how many machines were there. We had it  
10 in our new plaza, our class II machines.

11 COMMISSIONER HOGAN: Where's that located?

12 MR. GERALD EAGLE BEAR: It's right there  
13 on the casino property.

14 COMMISSIONER HOGAN: Oh, it's the one  
15 right there next to the motel and the casino?

16 MR. GERALD EAGLE BEAR: Yeah.

17 COMMISSIONER HOGAN: Yeah. I was out  
18 there about two or three weeks ago and visited with  
19 you. You were -- you were just really new then.

20 MR. GERALD EAGLE BEAR: Yeah. I was like  
21 two days old. (Laughter.) And within our casino,

22      too, we're going through a lot of -- within the  
23      gaming industry, too, we're going through a lot of  
24      changes and upgrades, with our management and stuff  
25      like that, there with the casino. You know, every

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1 day is something new that comes up.

2 I just answered a letter to NIGC, the Rapid  
3 City Office, the other day, which was previous to  
4 my taking on this position, but so, I'm gradually  
5 catching on to all of the regulations. I almost  
6 finished that entire thing. I have a stack of  
7 bibles on my desk, which you saw, which I'm  
8 constantly reading over and over and over to get  
9 caught up. Once I do that, we have all this new  
10 stuff that's coming upon us, and we'll try to catch  
11 up on.

12 And, like Betty, we have two more new gaming  
13 commissioners within our tribe, so we're -- we're  
14 really fresh, and I'm just hoping for some patience  
15 with everything, and we can catch on real fast.

16 COMMISSIONER HOGAN: Well, John Peterson's  
17 job, along with Jim and DeLyle out there, is to  
18 provide training to folks that are newly on board,  
19 so if -- there aren't any dumb questions. If  
20 you're wondering about something, why, please pick  
21 up the phone, and we'll trying to be responsive.

22           MR. PETERSON: We have a training session  
23   coming up in Montana, in Great Falls, in the middle  
24   of September, so you might want to look at that.

25           MR. GERALD EAGLE BEAR: Is that on the

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1 website?

2 MR. PETERSON: It's going to be.

3 MS. BETTY ZIMMERMAN: That's the earliest

4 training?

5 MR. PETERSON: You can, probably, work

6 something out with Jim and DeLyle through basic

7 stuff.

8 COMMISSIONER HOGAN: But those training

9 sessions are very good for a couple of reasons.

10 First of all, hopefully, our trainers know what

11 they're talking about, and will give you a good

12 understanding of the subject matter, but you also

13 get acquainted with similarly situated regulators,

14 many of whom will also be new, many of them who

15 will be experienced.

16 When we do that in Montana, there will be a lot

17 of tribes represented that are lot like Rosebud,

18 Pine Ridge, that are kind of the same size, rural,

19 small operations, that primarily provide employment

20 opportunities. They don't make millions and

21 millions of dollars, but nevertheless, they're very

22       important.

23               MR. GERALD EAGLE BEAR: I hope no one gets

24       the impression that everybody's new in Rosebud. We

25       do have some very intelligent gaming people in

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1 Rosebud. Right now, especially, today and  
2 tomorrow, we have an important tribal council  
3 meeting regarding the gaming that many of them have  
4 to stay back for, and we're pushing for some  
5 proposals to them, regarding our establishment,  
6 there in Rosebud. That's why the majority of them  
7 had to stay.

8 We came because we were new, and we wanted to  
9 learn more. I guess, I got the wrong impression on  
10 the consultation where I was supposed to actually  
11 share with you what I thought of it, and I thought  
12 you guys were gonna share with us about what you  
13 were proposing, so that's what I thought. I  
14 thought it would be a good learning experience for  
15 us both.

16 COMMISSIONER HOGAN: Well, it works both  
17 ways, so -- but now that you have a better idea of  
18 what we are proposing, if you have some comments  
19 you want to make, some thoughts you want to share  
20 with us, we're keeping the record open until  
21 August 23. We'd love to have your written comments

22 after you have a chance to look more carefully.

23 MR. GERALD EAGLE BEAR: From Rosebud, I

24 know we'll definitely be sending in written

25 comments before that time.

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1 COMMISSIONER HOGAN: Now, the first guy  
2 that I said hello to, when I walked in the door out  
3 there, is Ben. What's Ben's last name?

4 MR. GERALD EAGLE BEAR: Ben Jensen.

5 COMMISSIONER HOGAN: Yeah. He's an  
6 Oglala, I think.

7 MR. GERALD EAGLE BEAR: He's the tall --

8 COMMISSIONER HOGAN: He was with the  
9 gaming operation for quite a number of years, and,  
10 I think, he was in Las Vegas for a long time.

11 MR. PETERSON: Ben's been there a long  
12 time. He's been around gaming for years.

13 COMMISSIONER HOGAN: So I know that not  
14 everybody's new out there, because Ben's been in  
15 gaming for years and years.

16 MR. GERALD EAGLE BEAR: Many of them have.

17 COMMISSIONER HOGAN: I'd be happy to visit  
18 further about this, but we don't need to sit at the  
19 table the full 45 minutes if we've answered all of  
20 your questions, and you have no further specific  
21 comment. I'd be happy to discuss whatever you

22       want.

23               MS. BETTY ZIMMERMAN: Okay. As far as the

24       comment or suggestions, or so forth, from the

25       tribe, do you need those in resolution form, or

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1 just a letter with their suggestions? We really  
2 need to go back to the Tribal Council and inform  
3 them that there's a deadline coming up, and it  
4 would really be good if they had their input.

5 COMMISSIONER HOGAN: We will read whatever  
6 you send us, whether it's in resolution form or a  
7 letter from the Tribal Chair or Tribal Gaming  
8 Commission, we will take all of that under  
9 advisement.

10 MS. BETTY ZIMMERMAN: Okay. I really  
11 don't have, you know, any specific questions. It's  
12 just -- just taking everything in at this point.

13 MR. GERALD EAGLE BEAR: Same here. I  
14 mean, I take everything back to Tribal Council, you  
15 know, and they're having to deal with the entire  
16 tribe, and the gaming aspect we need to propose to  
17 them. And, like I said, we'll have something in  
18 writing back from the officials that need to  
19 respond besides out of my office.

20 COMMISSIONER HOGAN: All right. We'll  
21 look forward to receiving that, but in the

22       meantime, if you have further questions, please let  
23       us know.

24               MS. BETTY ZIMMERMAN: Are you having these  
25       sessions all day long?

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1           COMMISSIONER HOGAN: We have one more  
2       tribe scheduled to meet this afternoon, and then  
3       we'll be finished for the afternoon, but we were  
4       here all morning.

5           MR. GERALD EAGLE BEAR: You know, what I  
6       was hoping was to come in and, like, listen to  
7       them, the previous tribes, because I am new. I  
8       wanted to listen to what suggestions they had, and,  
9       of course, each tribe is different in what we're  
10      allowed as far as Class II and Class III. And I  
11      don't know what states are here, but I wanted to  
12      gather as much as I can out of everything I attend  
13      as far as gaming goes.

14          COMMISSIONER HOGAN: Well, there are times  
15      when we do have meetings like that, but in this  
16      government-to-government approach that we are  
17      taking, we are kind of having private meetings with  
18      each tribe, and so, that's the way that's been  
19      working.

20          MS. COLEMAN: But the transcription will  
21      be up on our website fairly soon as will all the

22        comments that have been submitted. We're going to  
23        bundle them all up and put them all on our website  
24        at niggc.gov, so you might want to look there in a  
25        week, or so, and see if they're up there. And that

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1 way, you'll be able to see what we've got, and that  
2 will continue to be true throughout August. As the  
3 comments come in, we'll put the group up one at a  
4 time.

5 MS. BETTY ZIMMERMAN: I imagine, the  
6 different states deal differently with their tribes  
7 within their states, right?

8 MS. COLEMAN: Yes.

9 MS. BETTY ZIMMERMAN: So they, probably,  
10 all have different kinds of comments or viewpoints  
11 or suggestions to be different from Rosebud?

12 COMMISSIONER CHONEY: Yes. When we leave  
13 here, we're going to Tacoma, Washington, for the  
14 Specific Northwest Tribes, and right after, then,  
15 we're going to Southern California, and then, we'll  
16 have a little one week break, and then we're going  
17 to Oklahoma for two days.

18 COMMISSIONER HOGAN: Earlier today, we  
19 talked to the Santee Sioux from Nebraska, and, of  
20 course, Nebraska won't compact with the tribe, so  
21 that's all they have is Class II. And one of the

22 things they mentioned was they will have folks who  
23 are used to playing the Class III games in South  
24 Dakota, probably, Rosebud and Yankton, come down  
25 and sit at these Class II machines, and they have

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1 to teach them how to do it, because it's a  
2 different kind of a deal.

3 MS. BETTY ZIMMERMAN: How many regions are  
4 there?

5 MR. PETERSON: Six.

6 MS. BETTY ZIMMERMAN: Six regions. So  
7 we're in the Minneapolis Region? Is that --

8 MR. PETERSON: You're in the Midwest  
9 Region, Region IV. You guys are in the Rapid City  
10 office, Jim and DeLyle can both give you the view  
11 from the State of South Dakota, because they both  
12 came from South Dakota gaming, like myself, and  
13 they can also talk about NIGC, both views there.

14 COMMISSIONER CHONEY: As far as training,  
15 if there's anything specifically you want, you  
16 know, contact our regional personnel, or keep  
17 looking at our website, and, 'cause other regions  
18 offer training, too. They might not offer it here.  
19 And you see where it is, you might want to attend  
20 that. Just letting you know, also, NIGA offers  
21 training to their regulators.

22 MS. BETTY ZIMMERMAN: Who's that? NIGA?

23 COMMISSIONER HOGAN: The National Indian

24 Gaming Association.

25 COMMISSIONER CHONEY: They have a website,

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1       also.

2               MR. VALANDRA: Indiangaming.org, I think,  
3       is their website.

4               COMMISSIONER CHONEY: And then, the  
5       National Regulators Association, they have  
6       excellent training to tribal regulators. They also  
7       certify them.

8               MS. BETTY ZIMMERMAN: Okay. This has been  
9       helpful to me.

10              MR. PETERSON: Don't let it overwhelm you.  
11       You'll catch on.

12              MS. BETTY ZIMMERMAN: Yeah. Looking  
13       forward to learning all I can about it.

14              COMMISSIONER HOGAN: Okay. We'll bring  
15       this session to a conclusion then.

16       (Whereupon, the proceedings concluded at  
17       approximately 1:29 p.m.)

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DIANE M. WRIGHT & ASSOCIATES

1 STATE OF MINNESOTA )  
 ) SS  
2 COUNTY OF WASHINGTON)

3 Be it known that I took the verbatim record of  
the National Indian Gaming Commission's  
4 Consultation Meetings regarding Classification  
Standards Regulation on July 17, 2006, at The  
5 Sheraton Hotel, 7800 Normandale Boulevard,  
Bloomington, Minnesota 55439;

6 That I was then and there a notary public in  
and for the County of Washington, State of  
7 Minnesota, and that by virtue thereof I was duly  
authorized to administer an oath but did not;

8 That the conversations of said participants was  
recorded in stenotype by myself and transcribed  
9 into typewriting, and that the Consultation  
Meetings is a true record of conversations given by  
10 the participants to the best of my ability;

That I am not related to any of the parties  
11 hereto nor interested in the outcome of the action;

That I am not financially interested in the  
12 action and have no contract with the parties,  
attorneys, or persons with an interest in the  
13 action that affects or has a substantial tendency  
to affect my impartiality;

14 That all parties who ordered copies have been  
charged at the same rate for such copies;

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16 WITNESS MY HAND AND SEAL THIS 24th day of July,  
2006.

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Sherry G. Auge  
Court Reporter

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DIANE M. WRIGHT & ASSOCIATES